

5/050131 24

FOIA Group, Inc
101 S. Whiting St. 16th Floor
Alexandria, VA 22304
703-461-3805
foia@foia.com

June 15, 2001

Mr. Todd Stevenson
FOIA Officer
US Consumer Product Safety Commission
Washington DC 20207

Fax: 301-504-0127

FOIA APPEAL

Dear Mr. Stevenson:

What is your Agency trying to hide? Who purchases what, from whom?

In April 2001, we sought to acquire government credit card transaction data relevant to AGENCY personnel, pursuant to the Freedom of Information Act. The data is simply an accounting of what purchases are made by government employees with government issued credit cards and public monies.

Our FOIA request **specifically excluded** card holders and transaction data from Agency personnel who are assigned to OCONUS, or in any sensitive, deployable agency unit. **The data we seek is clearly releasable under the FOIA, and is being provided to us by all other Executive agencies with little difficulty.** There is no rationale basis for the agency to stall, and deny us access to this data.

As of today, we have been informed that the Agency has no intention of complying with our FOIA request, but intends to issued a "no record" response or an incomplete partial response which is unacceptable. The Agency is acting arbitrary and capricious in its' decision to deny us access to this data. The public has a right to know where, and for what public monies are being spent.

Therefore, pursuant to the Freedom of Information Act ("FOIA") I hereby appeal the denial, or in the alternative the "constructive denial" of all information sought in our April 2001 FOIA request.

FOIA APPEAL

Mr. Todd Stevenson / FOIA Officer
US Consumer Product Safety Commission

Page 2 of 2

I respectfully request that you expedite this appeal wherefore we can seek the appropriate remedy in District Court.

With kind regards,

Jeff Stachewicz
Counsel



ON-LINE REPORTING IS HERE.

Bringing you the information you need. Anytime.
Anywhere.

To gain access contact your
GSA smartpay contractor or your
agency program coordinator.

ON-LINE REPORTS

Report Description	Bank of America	Bank One	Citibank	US Bank
Invoice Status Report	X	X	X	X
Transaction Dispute Report		X	X	X
Pre-suspension/Pre-Cancellation Report	X	X	X	X
Suspension/Cancellation Report	X	X	X	X
Renewal Report	X		X	X
Delinquency Report	X	X	X	X
Account Activity Report	X	X	X	X
Master File Report		X	X	X
Statistical Summary Report	X	X	X	X
Account Change Report	X			
Exception Report	X			X
Current Accounts Report	X		X	X
1099 Report Information	X		X	X
1057 Report			X	X
Payment Performance and Refund Report			X	
Write-Off Report			X	X
Summary Quarterly Merchant Report	X	X	X	X
Summary Quarterly Vendor Analysis Report	X	X	X	X
Summary Quarterly Vendor Ranking Report	X		X	
Airline Credit/Refund For Travel	X			
Prefunded Cards on IBA for Travel				
Summary Quarterly Purchase Report for Purchase	X		X	

Reports from Mellon Bank are available in paper.
As reported by GSA SmartPay contractors 5/16/01

FOIA Group, Inc
101 S. Whiting St. 16th Floor
Alexandria, Virginia 22304
Tel: 703-461-3805 Fax: 703-461-3807

June 15, 2001

To: Agency FOIA & Legal Officers

Re: FOIA Request for credit card holder's identities and relevant transaction data

Prepared for your consideration and convenience is an overview of the Government's "SmartPay" Credit Card Program (formerly IMPAC), a brief discussion of the facts, and relevant document attachments.

(1) Discussion Topics Include:

- The FOIA Group, Inc. ("FGI") Request
- Smart Pay Program
- Smart Pay Contract(s)
- Agency Records and E-FOIA Requirements
- Other Agencies Response to FGI's FOIA request

(2) The FOIA Request

On or about April 24, 2001, FOIA Group, Inc. filed with the Agency a FOIA request for the identities of Government credit card holders and their respective transaction data. (See: Attachment #1, Copy of FOIA Request).

- Electronic Agency Records sought included the most recent Annual Credit Card Report(s) that contained the card holders: name, agency, complete business address, telephone number, and a description of purchases by Merchant Code and SIC code, MCC Description, Merchant name and address, and all specific transactions with the total dollars spent. Timeframe: October 2000 to present *
- Excluded specifically from the FOIA request were any data concerning sensitive and immediate deployable personnel, or transactions relevant to OCONUS.

SmartPay Credit Card
FOIA Request & Appeal

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- During the FOIA process, FGI has had numerous correspondence or discussions with the Agency concerning the most cost efficient process to obtain this data.

(3) SmartPay Program (Overview)

- In November 1998, **GSA awarded contracts** to 5 "Contractor-Banks" for Government Purchase, Travel and Fleet card services.
- The Purchase Card Program Structure's key participants are: the "Bank", GSA, Agency Program Coordinators, Approving Officials, and Cardholders.
- The objectives of the Purchase Card Program are, in part, to simplify administrative processes related to the purchase and payment of goods and services by the Government, provide enhanced management control, and provide ready access to transaction data.
- Cardholder Responsibilities, include in part, to ensures all purchases are for "Official Use" and that no purchases are for personal use.

(4) SmartPay Contracts

- The Government envisioned the use of credit card-based systems as essential tools in its migration from paper-based to electronic systems. Federal agencies/organizations are looking to automate their business processes, replacing paper-based processes with electronic transactions and document flows. (See: Attachment #2, Master Contract, hereinafter "MC" at page 130.)

SmartPay Credit Card
FOIA Request & Appeal

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- The Master Contract required the "Banks" to offer an integrated solution across 2 or more of the core Programs for fleet, travel, and purchase. (See: "MC" at page 130.)
- Through systems integration, and a consolidated approach to these card services programs, the Government expected to, in part, (a) gain efficiencies in Contractor services and prices; (b) leverage the costs of investment for new systems and technology; (c) to consolidate overhead and other support functions for these Card Programs; and (d) **to consolidate accounting and reporting data and systems.** (See: "MC" at page 130.)
- The collected credit card data is the property of the respective Government agency. The "Contractor-Bank has **no** authority, rights or ownership over the credit card data that is in their possession and/or control. Furthermore, the "MC" specifically prohibits the "Contractor-Bank" from exercising any discretion concerning the use or disclosure of any credit card data relevant to the SmartPay Program **unless** specifically provided for in the Contract or by the Agency. (See: "MC" at page 141.)
- The "Contractor-Bank" shall provide electronic access to each participating Agency Program Coordinators (A/OPC) to enable program implementation and program management **to include, but not be limited to:**
 - a) Sending in program forms;
 - b) Account set-up;
 - c) Account maintenance;
 - d) Activating/deactivating a card;
 - e) Renewing a card;
 - f) Updating required authorization controls;
 - g) Disputing a transaction;
 - h) Sorting, reviewing and manipulating transaction data;
 - i) **Downloading reports**, statements of accounts or invoices; and
 - j) **Generating ad hoc reports.** (See: "MC" at page 153.)
- In addition to unique "ad hoc" reports, each Agency has the ability to select and receive from almost 20 different transaction management reports from each Bank with the stroke of a computer key. (See: SmartPay On-Line Reporting, at Attachment #3).

- Generating a Report from existing agency data pursuant to a FOIA request is NOT creating a document, to justify a non-favorable response by the agency.

(5) Agency Records and E-FOIA Amendments Requirements

- The credit card holders identity, and complete business address, sought by FGI and noted in #2 above, is clearly releasable under the FOIA. Most Agencies already post the credit card holders information on their respective web site.
- The credit card transaction data, sought by FGI and noted in #2 above, is data that the "Contractor-Bank" is required to collect, maintain and disseminate under the contract. Where the electronic data may at times be stored or warehoused does not change the fact that these are Government agency records.
- E-FOIA Amendments settled, once and for all, that agency records maintained in electronic format are subject to the FOIA. The Agency must provide us the records in the format requested, including requests for records in a particular electronic format, if the record "is readily reproducible by the Agency in that form or format." (See 5 U.S.C. Sec. 552(a)(3)(B)).
- The E-FOIA Amendments also require the Agency to make "reasonable efforts" to search for records in electronic form or format. 5 U.S.C. Sec. 552(a)(3)(C). This obligation may include using search software or doing some modest programming to identify and retrieve FOIA requested records.
- Agency cannot demonstrate that production of the electronic records sought by FGI's FOIA request would either significantly interfere with the operation of the Agency's automated information system, or otherwise impair Agency operation.
- **Generating a Report from existing agency data pursuant to a FOIA request is NOT creating a document, to justify a non-favorable response by the agency.**
- FGI is willing to raise the fee authorization limit for purpose of satisfying the processing of records relevant to this FOIA request.

SmartPay Credit Card
FOIA Request & Appeal

Page 5 of 5 . . .

(6) Other Agencies Response

- FGI has filed a similar FOIA request with most other Federal agencies.
- **GSA, administrator of the Government's SmartPay Program was one of first agencies to provide a favorable total response, producing the records as requested at " \$ 0.0 " cost to the requester.**
- Many agencies have already responded to FGI's FOIA request by producing the relevant credit card holder and transaction data. Other agencies have already approved release of the requested data and are processing and preparing the data for release.
- To date, processing fees for this FOIA request range from " \$ 0.0 " to " \$ 419.00".

In closing, I remain available to discuss both the issues and processing considerations relevant to our FOIA request. I look forward to speaking with you.

Best Regards,

Jeff Stachewicz, Esquire
FOIA Group, Inc.

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101 S. Whiting St. 16th Floor
Alexandria, VA 22304
703-461-3805
foia@foia.com

June 15, 2001

Mr. Todd Stevenson
FOIA Officer
US Consumer Product Safety Commission
Washington DC 20207

Fax: 301-504-0127

FOIA APPEAL

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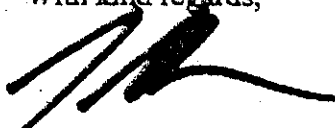
FOIA APPEAL

Mr. Todd Stevenson / FOIA Officer
US Consumer Product Safety Commission

Page 2 of 2

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Jeff Stachewicz
Counsel

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June 15, 2001

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FOIA Officer
US Consumer Product Safety Commission
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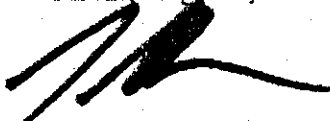
FOIA APPEAL

Mr. Todd Stevenson / FOIA Officer
US Consumer Product Safety Commission

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Jeff Stachewicz
Counsel



Granted 1050131,
chron, 2618

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Acting Secretary and Freedom of Information Officer
Freedom of Information
Office of the Secretary

Tel: 301 504 0785
Fax: 301 504 0127
Email: tstevenson@cpsc.gov

June 4, 2001

Mr. Jeff Stachewicz, Counsel
FOIA Group, Inc.
101 S. Whiting Street, 16th Floor
Alexandria, VA 22304

RE: FOIA S-1050131; Credit Card Holders

Dear Mr. Stachewicz:

This responds to your Freedom of Information Act request to the U. S. Consumer Product Safety Commission (Commission).

We are informed by staff of the Commission's Division of Financial Services that the requested information is not available in the format requested (MS ACCESS or EXCELL).

We have enclosed a list of the credit card holders along with their address and telephone numbers.

This completes the processing of your request. If you have questions, contact us by letter, telephone, e-mail or telefax.

Sincerely,

Todd A. Stevenson

Enclosure

Warren, Cynthia B.

From: Hodge, Debbie P.
Sent: Tuesday, May 29, 2001 12:01 PM
To: Stevenson, Todd A.
Cc: Warren, Cynthia B.
Subject: FOIA S1050131

Todd,
I have reviewed the request under the subject FOIA. ADFS is unable to supply the information requested. In Mr. Stachewicz letter, he states that he only wants the info in ms access or excel. I do not have the requested data available in this format. The only information available in this format is the cardholders name.

Information is available in hard copy form. It would take approximately 36 hours to pull and copy the information if required to do so.

I will return the FOIA request to you with a copy of this e-mail.

Let me know if you have any questions regarding this information.

Deborah Peebles Hodge
Consumer Product Safety Commission
301-504-0018 x1132
dhodge@cpsc.gov

FOIA Group, Inc
101 S. Whiting St. 16th Floor
Alexandria, VA 22304
703-461-3805

5-17-01
April 24, 2001

FOIA REQUEST

TO: Sandra Bradshaw

Fax: 301-504-0127

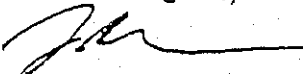
Dear Sir/Madam:

Under the provisions of the Freedom of Information Act, and relevant agency regulations, I hereby request a copy of the following items:

- (1) Annual report(s) (most recent) showing the detailed purchasing of the Smart Pay, Impact, or other gov't credit card holders for your agency.
 - This report should include the credit card holders:
 - a. name, agency, complete business address, telephone number, a description of purchases by Merchant Code and SIC code, Merchant name and address, Number of charges, and total dollars.
 - We seek this information only in electronic format MS ACCESS or EXCELL.

We seek the right to modify this FOIA request as appropriate. I agree to pay reasonable FOIA fees, however, please notify me if these fees exceed \$15.00. Thanks *

With kind regards,


Jeff Stachewicz
Counsel

51050131



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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel
Office of the General Counsel

Tel: (301) 504-0930
Fax: (301) 504-0463
Email: cpsc-gc@cpsc.gov

September 14, 2001

Mr. Joshua M. Robinson
Jackson W. Watts Law Offices
131 Morgan Street
Versailles, KY 40383

Re: FOIA Appeal S1070113
Dynacraft Shockzone Mountain Bicycles
Commission Compliance Corrective Action and Recall File RP010144

Dear Mr. Robinson:

By letter dated August 10, 2001, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive information. As explained below, I affirm the FOI Officer's decision to withhold a portion of the information pursuant to FOIA Exemptions 3, 5, and 7(A). 5 U.S.C. §§ 552 (b)(3), (b)(5), and (b)(7)(A).

This letter (and the others you have received from Commission staff to date) lay out the legal reasons why some of the materials you are requesting that relate to unsafe products cannot be released. We certainly understand your desire to receive the files promptly. However, no matter how compelling we may find the reasons you need the materials, we have a responsibility to interpret in good faith and comply with the applicable laws, specifically the FOIA and the Consumer Product Safety Act (CPSA). As you know, these laws dictate what information we can and cannot disclose. We recognize and respect the importance of giving the public access to this type of information and seek to facilitate that access where possible. The remainder of this letter is an explanation of how we apply the laws to your request and the procedures we are following.

I turn now to a more specific discussion of the legal reasons the materials are being withheld. FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on section 6(b)(1) of the CPSA. 15 U.S.C. § 2055(b)(1).

Page 2

Section 6(b)(1) of the CPSA requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. We are withholding six consumer product complaints pursuant to FOIA Exemption 3 relying on CPSA section 6(b)(1). The regulation under that section requires the Commission to confirm the accuracy of the information where the manufacturer has been identified. See 16 C.F.R. § 1101.32. Since the Commission is unable to confirm the accuracy of this information, I must withhold it.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. The information being withheld pursuant to FOIA Exemption 5 consists of intra-agency memoranda, attorneys' notes, Commission engineering reports, and internal staff notes relating to these compliance matters. Each of these documents was either prepared by or under the supervision of an attorney in our compliance office in anticipation of future litigation. They also constitute advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the Commission. Please note that Exemption 5 continues to apply after the Commission has decided a particular matter. The disclosure of deliberative-type documents at that time would have a chilling effect on the open exchange of views within the agency in future matters.

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. The information being withheld under this exemption is a part of an investigatory file. The Commission is conducting this investigation to determine whether the company has violated any laws or regulations. The release of any of this information prior to the conclusion of this investigation could reasonably be expected to interfere with these enforcement proceedings. The records being withheld under this exemption consist of intra-agency memoranda, attorneys' notes, Commission engineering reports, and internal staff notes relating to these enforcement matters, as well as the correspondence between the company and the Commission.

In response to the comments in your appeal letter, our investigation is ongoing. This case remains open because the Commission is conducting an investigation to determine whether the company provided the required notice to the Commission in a timely manner. See 15 U.S.C. § 2064. With respect to the consumer product complaints, the Commission is required to take reasonable steps to assure the accuracy of information that it proposes to release to the public. The types of "reasonable steps" are listed in 16 C.F.R. § 1101.32. When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm

Mr. Joshua M. Robinson
September 14, 2001

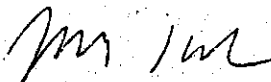
Page 3

the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, and there is no practical way for us to follow up on their failure to do so due to the great volume of complaints received by this agency, the Commission may not disclose the complaints under the FOIA.

With respect to the remainder of your comments, I believe that the description of the withheld information and the reasons for such withholding, as expressed in this letter, meet the necessary requirements of the FOIA. Moreover, as stated above, the Commission is bound by the FOIA, as well as the CPSA, concerning the disclosure of the requested information.

I hope this letter gives you a bit more insight into the rationale for our actions. We welcome your interest in consumer safety and are grateful for your efforts to draw attention to consumer issues. You have the right to seek judicial review of this decision as provided by 5 U.S.C § 552(a)(4)(B).

Sincerely,

A handwritten signature in dark ink, appearing to read 'MS Solender', is written above the printed name.

Michael S. Solender

Jackson W. Watts

LAW OFFICES
131 MORGAN STREET
VERSAILLES, KENTUCKY 40383

Bradly Slutskin
Associate Attorney

(859) 873-8627
FAX (859) 873-0620

August 10, 2001

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary,
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

RE: FOIA Request S1070113: Dynacraft Shockzone Mountain Bicycles, Corrective Action or Recall File RP010144:

APPEAL of Failure to Disclose

Dear General Counsel:

Thank you for your attention to this matter and the records that were sent. However, I was disappointed by your failure to disclose Corrective Action or Recall File RP010144, Dynacraft Industries, Inc. You cited Exemptions 5 and 7(A) of the Act for your denial. Specifically, you said that the disclosure of these records was "contrary to the public interest." Respectfully, I disagree.

The product in question was recalled April 24, 2001. It is now 4 months later. Much if not all of the "recommendations, opinions, suggestions and analyses" concerning the recall had already been made by the recall date in April. It is hard to imagine that a product would be recalled *before* the deliberative process had been completed.

Second, the recall notice itself cites the fact that as of April, Dynacraft had already received 33 reports of product failures, resulting in 32 injuries. The longer your agency takes to reveal information to the public by way of these FOIA disclosures, the more people get injured.

Third, the product in question was sold exclusively at Wal-Mart. Wal-Mart is notorious for abusing the discovery process in the civil litigation arena. Wal-Mart fights tooth and nail to keep from disclosing other similar incidents of product failures. The Dynacraft bicycle will certainly be no exception. When I visited Wal-Mart, I found the recall notice posted in an obscure location at the lay away desk, far from the bicycles or any other area when a concerned consumer might be able to see the notice.

I have no doubt based on their past records that Wal-Mart will continue to fail to inform its customers about unsafe products. For Wal-Mart, it is simply about making a profit. It is up to you to keep the public informed and safe! Without the protection and cooperation of the federal government, specifically the CPSC, individuals have little if any information by which to keep them and their children safe.

In contrast to Wal-Mart, your agency works for the public at large. Your job is *not* to protect the manufacturer of defective products from the public learning the details of their product defects. I realize that it's a cooperative process when a product is recalled. You explained this in your letter to me. However, I cannot, in good faith, accept the reasons you gave for failing to disclose the complete Corrective Action or Recall file RP010144.

For example, you said that disclosure at this point may "impair the frank exchange of views with respect to such matters." I ask: Impair the frank exchange of views between *who*?

Your secrecy clearly does not enhance the frank exchange of views in the public at large. The public has a right to know the details concerning defective products. If you made this information fully public, mothers could tell other mothers who could tell other mothers that this bicycle is unsafe. But by keeping your files secret, you exacerbate the problem because no one has any information to exchange in the first place.

The other reason you gave was that complete disclosure may disclose the government's basis for pursuing this matter. This explanation is somewhat disingenuous. The basis for pursuing this matter is clearly disclosed by the fact that a recall occurred! In other words, the government's basis is that these products are unsafe and people are getting injured.

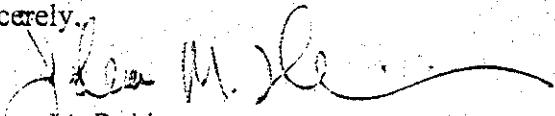
If the ultimate goal of the investigation is to keep people safe, disclosure at this time will not hinder your goal, it will help fulfill it. Disclosing to the public the details of the recall will allow more informed product purchasing decisions in the future. Using exemptions to keep information from consumers in the name of furthering law enforcement will not.

In fact, from what you told me, your agency does not seem to be doing much law enforcement in this case at all. For example, in response to my request, you said "the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information."

Why hasn't your any of your technical or legal staff, who are busy writing recommendations, suggestions, memoranda, and the like to one another and to the manufacturer, confirmed these six complaints? Moreover, your explanation also begs the question: Did you ever confirm the 33 reports to Dynacraft cited in the Recall notice? It is hard to understand why a Federal investigator would not confirm actual injuries as an integral part of their investigation.

In any event, please let this letter serve as my APPEAL pursuant to 16 CFR § 1015.7 of the failure to disclose Corrective Action or Recall file RP010144, Dynacraft Industries, Inc. In addition, this letter shall serve as a continuing request to disclose said file as soon as the case is closed. Since I have no way of knowing exactly when you will close the file, I am making this continuing request. If, however, there is some way you can notify me that the file is closed, I would gladly resubmit my request at that time. I appreciate your waiver of the \$90.00 cost for processing this request.

Sincerely,


Joshua M. Robinson

CC: Todd Stevenson



DEW 1070113

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Acting Secretary and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

July 25, 2001

CERTIFIED MAIL

Joshua M. Robinson
848 Laurel Hill Road
Lexington, KY 40504

Re: FOIA Request S1070113: Dynacraft Shockzone Mountain Bicycles / Complaints, Reported Incidents and Investigations of Incidents and Corrective Action or Recall File RP010144

Dear Mr. Robinson:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. The enclosed records are two product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In the complaints and reported incidents we have removed the identities of the complainants at their request.

We must withhold other records responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory file, Corrective Action or Recall File RP010144, Dynacraft Industries, Inc., pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda, notes and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and

deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The other records from the Commission files responsive to your request relate to six product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the CPSA, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

The information from the file RP010144, Dynacraft, may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$90.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

Leonard, Vicky/B.

From: Jacksonwwatts@aol.com
Sent: Monday, July 16, 2001 1:28 PM
To: clearinghouse@cpsc.gov
Cc: scriborex@hotmail.com
Subject: (no subject)

Please respond to scriborex@hotmail.com.

I am requesting any and all information you have about a bicycle made by DYNACRAFT, Inc. called the "Next Shockzone."
I am particularly interested in problems with faulty welding and/or metal failure, but I need all information you have about the product generally.

My name is Joshua M. Robinson and my mailing address is 848 Laurel Hill Road, Lexington, Ky 40504. My phone number is 859-273-1929 or 859-312-0530.

Thank you in advance for this help.

Josh Robinson

S-1070113

RPD/01/14

U.S. Consumer Product Safety Commission
Memorandum

To: Michael S. Solender, General Counsel

Through: Alan Shakin, Assistant General Counsel

From: Todd A. Stevenson, FOI Officer, Office of the Secretary

Date: August 23, 2001

Re: FOIA Appeal S1070113 Robinson / Watts Seeking Active Compliance File on Dynacraft Shockzone Mountain Bicycles and Unconfirmed Complaints

The FOIA Appeal dated August 10, 2001, of our denial dated July 25, attached was received in the Office of the Secretary on August 16. Mr. Robinson is appealing the withholding of an active Compliance/Litigation file on Dynacraft Shockzone Mountain Bicycles RP 010144 pursuant to FOIA Exemptions Ex 5 and 7(A) and unconfirmed complaints applying Exemption 3 and CPSA 6(b)(1). Attached are the correspondence, and our processing notes. Contact Mike Gidding X1344. Should you need to discuss the materials or our processing, please see or call me X1239.

Date of Appeal: 8/10/01

Received in OS: 8/16/01

Time Limit on

Appeal Decision: Friday September 14, 2001

Jackson W. Watts

LAW OFFICES
131 MORGAN STREET
VERSAILLES, KENTUCKY 40383

Bradly Slutskin
Associate Attorney

(859) 873-6627
FAX (859) 873-0620

August 10, 2001

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary,
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

RE: FOIA Request S1070113: Dynacraft Shockzone Mountain Bicycles, Corrective Action or Recall File RP010144;

APPEAL of Failure to Disclose

Dear General Counsel:

Thank you for your attention to this matter and the records that were sent. However, I was disappointed by your failure to disclose Corrective Action or Recall File RP010144, Dynacraft Industries, Inc. You cited Exemptions 5 and 7(A) of the Act for your denial. Specifically, you said that the disclosure of these records was "contrary to the public interest." Respectfully, I disagree.

The product in question was recalled April 24, 2001. It is now 4 months later. Much if not all of the "recommendations, opinions, suggestions and analyses" concerning the recall had already been made by the recall date in April. It is hard to imagine that a product would be recalled *before* the deliberative process had been completed.

Second, the recall notice itself cites the fact that as of April, Dynacraft had already received 33 reports of product failures, resulting in 32 injuries. The longer your agency takes to reveal information to the public by way of these FOIA disclosures, the more people get injured.

Third, the product in question was sold exclusively at Wal-Mart. Wal-Mart is notorious for abusing the discovery process in the civil litigation arena. Wal-Mart fights tooth and nail to keep from disclosing other similar incidents of product failures. The Dynacraft bicycle will certainly be no exception. When I visited Wal-Mart, I found the recall notice posted in an obscure location at the lay away desk, far from the bicycles or any other area when a concerned consumer might be able to see the notice.

I have no doubt based on their past records that Wal-Mart will continue to fail to inform its customers about unsafe products. For Wal-Mart, it is simply about making a profit. It is up to you to keep the public informed and safe! Without the protection and cooperation of the federal government, specifically the CPSC, individuals have little if any information by which to keep them and their children safe.

In contrast to Wal-Mart, your agency works for the public at large. Your job is *not* to protect the manufacturer of defective products from the public learning the details of their product defects. I realize that it's a cooperative process when a product is recalled. You explained this in your letter to me. However, I cannot, in good faith, accept the reasons you gave for failing to disclose the complete Corrective Action or Recall file RP010144.

For example, you said that disclosure at this point may "impair the frank exchange of views with respect to such matters." I ask: Impair the frank exchange of views between *who*?

Your secrecy clearly does not enhance the frank exchange of views in the public at large. The public has a right to know the details concerning defective products. If you made this information fully public, mothers could tell other mothers who could tell other mothers that this bicycle is unsafe. But by keeping your files secret, you exacerbate the problem because no one has any information to exchange in the first place.

The other reason you gave was that complete disclosure may disclose the government's basis for pursuing this matter. This explanation is somewhat disingenuous. The basis for pursuing this matter is clearly disclosed by the fact that a recall occurred! In other words, the government's basis is that these products are unsafe and people are getting injured.

If the ultimate goal of the investigation is to keep people safe, disclosure at this time will not hinder your goal, it will help fulfill it. Disclosing to the public the details of the recall will allow more informed product purchasing decisions in the future. Using exemptions to keep information from consumers in the name of furthering law enforcement will not.

In fact, from what you told me, your agency does not seem to be doing much law enforcement in this case at all. For example, in response to my request, you said "the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information."

Why hasn't any of your technical or legal staff, who are busy writing recommendations, suggestions, memoranda, and the like to one another and to the manufacturer, confirmed these six complaints? Moreover, your explanation also begs the question: Did you ever confirm the 33 reports to Dynacraft cited in the Recall notice? It is hard to understand why a Federal investigator would not confirm actual injuries as an integral part of their investigation.

In any event, please let this letter serve as my APPEAL pursuant to 16 CFR § 1015.7 of the failure to disclose Corrective Action or Recall file RP010144, Dynacraft Industries, Inc. In addition, this letter shall serve as a continuing request to disclose said file as soon as the case is closed. Since I have no way of knowing exactly when you will close the file, I am making this continuing request. If, however, there is some way you can notify me that the file is closed, I would gladly resubmit my request at that time. I appreciate your waiver of the \$90.00 cost for processing this request.

Sincerely,



Joshua M. Robinson

CC: Todd Stevenson



NEW 1070113

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Acting Secretary and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

July 25, 2001

CERTIFIED MAIL

Joshua M. Robinson
848 Laurel Hill Road
Lexington, KY 40504

Re: FOIA Request S1070113: Dynacraft Shockzone Mountain Bicycles / Complaints, Reported Incidents and Investigations of Incidents and Corrective Action or Recall File RP010144

Dear Mr. Robinson:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. The enclosed records are two product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In the complaints and reported incidents we have removed the identities of the complainants at their request.

We must withhold other records responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory file, Corrective Action or Recall File RP010144, Dynacraft Industries, Inc., pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda, notes and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and

deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The other records from the Commission files responsive to your request relate to six product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the CPSA, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

The information from the file RP010144, Dynacraft, may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$90.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

Leonard, Vicky/B.

From: Jacksonwwatts@aol.com
Sent: Monday, July 16, 2001 1:28 PM
To: clearinghouse@cpsc.gov
Cc: scriborex@hotmail.com
Subject: (no subject)

Please respond to scriborex@hotmail.com.

I am requesting any and all information you have about a bicycle made by DYNACRAFT, Inc. called the "Next Shockzone."
I am particularly interested in problems with faulty welding and/or metal failure, but I need all information you have about the product generally.

My name is Joshua M. Robinson and my mailing address is 848 Laurel Hill Road, Lexington, Ky 40504. My phone number is 859-278-1929 or 859-312-0580.

Thank you in advance for this help.

Josh Robinson

S-1070113

RPD/01/44



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel

Office of the General Counsel

26
Tel: (301) 504-0330
Fax: (301) 504-0403
Email: cpssc-gc@cpssc.gov

September 26, 2001

Brian C. Williams, Esq.
Kasdorf, Lewis & Swietlik, S.C.
1551 South 108th Street
P.O. Box 44200
Milwaukee, WI 53214-7200

Re: FOIA Appeal S1070106: Marco Manufacturing
Decorative Gas Fireplaces: Compliance File CA980016

Dear Mr. Williams:

By letter dated September 5, 2001, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and this information. The responsive information in Compliance File CA980016 is no longer an open file. Accordingly, the FOI Officer has reconsidered his decision. While we must continue to withhold that information, as explained below, it may be released in the future. To pursue the disclosure of this information, you do not need to take any additional action, as explained below.

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2) and (b)(1) of the Consumer Product Safety Act, 15 U.S.C. §§ 2055 (a)(2) and (b)(1). Both of these sections require the Commission to give the manufacturer an opportunity to comment on the disclosure of product-specific information before it can be released. This has not occurred yet because the responsive information was a part of an open compliance file that was not subject to disclosure at that time. Now that it has been closed, the FOI Officer will send it to the manufacturer for comment.

Brian C. Williams, Esq.
September 26, 2001

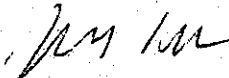
Page 2

Once the information has been fully processed, if we decide to disclose it, we will give the company a 10-day notice, as required by 15 U.S.C. §§ 2055(a)(5) and (b)(2). Then, if a court does not prohibit disclosure (within the 10-day period), we will send you the information.

In the meantime, if you do not wish to wait for the completion of this process, you have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Please note that the FOI Officer's August 2, 2001 letter also referred to Compliance File CA000005. He now realizes that that file is not responsive to your FOIA request.

Sincerely,

A handwritten signature in dark ink, appearing to read "MS Solender", is written above the printed name.

Michael S. Solender

KASDORF, LEWIS & SWIETLIK, S.C.

Attorneys at Law

1551 South 108th Street • P.O. Box 44200 • Milwaukee, WI 53214-7200
414-257-1055 • Fax 414-257-3759

Offices also in Green Bay and Wausau, Wisconsin

JAMES P. REARDON
TERRANCE E. DAVCZYK
JEFFREY A. SCHMECKPEPER
GREGORY J. COOK
MICHAEL J. CIESLEWICZ
MICHAEL A. MESIROW
JOSEPH J. FERRIS
JAMES J. KRIVA
DAVID L. STYER
ROBERT J. LAUER
JAMES M. RYAN
ROBERT P. OCHOWICZ
MICHAEL S. MURRAY
JOHN M. SWIETLIK, JR.
DANIEL W. VARLINE

Of Counsel:
CLIFFORD C. KASDORF
JOHN M. SWIETLIK

DONALD P. SCHNEIDER
MICHAEL C. FROHMAN
CHARLES G. MARIS
THOMAS A. CABUSH
CHRISTOPHER A. DUESING
PAUL R. VAN GRUNSVEN
WENDY S. LARSON
JOHN H. SCHROTH
CYNTHIA H. FLYNN
PETER M. SILVER
BONNI D. FREDRICK
JULIETTE C. DAHMS
BRIAN P. BEISENSTEIN
MELISSA A. SCHAFER
ANN M. HETZEL
DANIEL R. PETERS
MATTHEW W. MORAN
ANTHONY P. HAHN
BRADLEY S. FOLEY
DAVID J. KANIA
BRIAN C. WILLIAMS

September 5, 2001

VIA OVERNIGHT MAIL

FOIA APPEAL, General Counsel
Attn: Office of the Secretary, US Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814

Re: *Marco Manufacturing CCT Decorative Gas Fireplaces*
File Nos: CA980016 and CA000005
State Farm Fire and Casualty Co. v. Jerry's Fireplaces, LLC, et al
Case No: 99-CV-267
Our File No: 208728

Dear Sir or Madam:

Please accept this letter as our firm's request to appeal the decision of the US Consumer Product Safety Commission, in regard to the above captioned matter, as stated in your letter of August 2, 2001 and received in this office on August 9, 2001. A copy of said letter is enclosed for your review. The information sought relates to the safety recall of one of Marco Manufacturing's fireplaces. A copy of the "Voluntary Corrective Action Plans Under Section 15 of the Consumer Product Safety Act" is enclosed for your reference.

A letter from the Consumer Products Safety Commission sent in relation to the product recall cites 20 fires associated with this product. Records relating to these fires and communications between the CPSC and Marco Manufacturing are the records being sought. We are not seeking interoffice memorandum from the CPSC or a related agency. As such, it is our opinion that the exemption stated in your denial letter does not apply. Additionally, Marco Manufacturing apparently voluntarily complied with the product recall in 1998, so there is no conflict with the law enforcement exemption. Further, the recall appears to have been completed, so there is not an ongoing investigation necessitating nondisclosure. If the only hindrance to obtaining these records is the possible trade secrets disclosure, please advise and a confidentiality agreement can be authored.

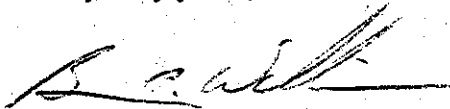
September 5, 2001

Page 2

There is currently pending litigation involving Marco Manufacturing involving the recalled product, the above case pending in Dodge County, Wisconsin. Marco has thus far failed to provide responses to discovery requests regarding the recall or the 20 fires mentioned in the "Urgent Safety Recall" letter. In fact, Marco has claimed on the court record to be aware of only 7 fires relating to the subject product. Clearly, this is not the case, given the letters sent out as required by this recall. Marco has refused to disclose any information regarding the recall and the decision to commence it. The information in your files may be the only source for this information, thus assisting greatly in the prosecution of that case.

Enclosed with this letter, please find a Subpoena Duces Tecum, requesting Commission Office of Compliance files: CA980016 and CA000005. We are enclosing this subpoena as a formality, should it be necessary by the Commission's procedures. If it is necessary to redact some parts of the file pursuant to statute, please advise. However, we ask that you provide to us as soon as possible the information not subject to exemption.

Very truly yours,

A handwritten signature in dark ink, appearing to read "B. Williams", with a horizontal line extending to the right.

Brian C. Williams

BCW/ms
Enclosures



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Acting Secretary and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

August 2, 2001

CERTIFIED MAIL

Thomas C. Winiecki
Kasdore, Lewis & Swietlik
1551 South 108th Street
PO BOX 44200
Milwaukee, WI 53214-7200

RECEIVED

AUG 09 2001

KASDORF
LEWIS & SWIETLIK, S.C.

Re: FOIA Request S1070106: Marco Manufacturing CCTDecorative Gas Fireplaces
/ Commission Office of Compliance Files: CA980016 and CA000005

Dear Mr. Winiecki:

Thank you for your Freedom of Information Act (FOIA) request to the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file referenced above, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal

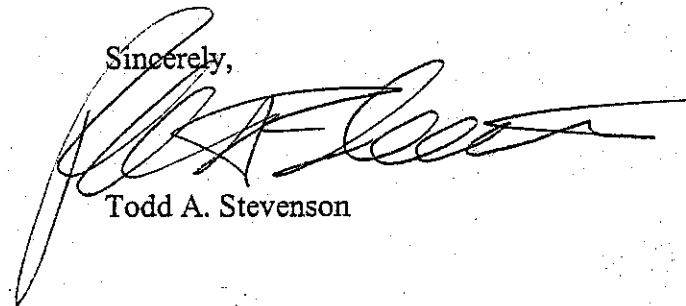
information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The files also contains proprietary and confidential information submitted by the company, manufacturer monthly progress reports, that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", is written over the typed name.

Todd A. Stevenson

Voluntary Corrective Action Plans Under Section 15
of the Consumer Product Safety Act and
Section 15 of the Federal Hazardous Substances Act

The following is a list of voluntary corrective action plans recently accepted by the Commission (or the staff acting under authority delegated by the Commission). A firm's taking corrective action does not constitute admission by the firm that a substantial product hazard exists.

Space does not permit the staff to give a complete list of the specific model numbers of the products involved in each of these corrective actions. Consumers who believe that they have a product affected by one of these actions should follow the instructions given in this list or contact either the manufacturer or the Commission to determine if their product is one of those affected.

Voluntary Corrective Action Plans Under
Section 15 of the Consumer Product Safety Act and
Section 15 of the Federal Hazardous Substances Act

ITE	FIRM AND PRODUCT	ALLEGED HAZARD	REMEDY
98	Marco Manufacturing Inc. Lynwood, CA 90262 Marco Margas CCT decorative gas fireplaces with colinear venting	The exhaust flue may separate from the termination on the exterior of the house and release hot exhaust gases inside the wall. This could cause house fires.	Free in-home retrofit 1-888-420-6272

URGENT SAFETY NOTICE

Dear Homeowner,

The manufacturer of the Marco CCT gas fireplace(s) installed in your home, in cooperation with the U.S. Consumer Product Safety Commission (CPSC), will retrofit your fireplace by adding a part in the chimney system. The purpose of the retrofit is to eliminate the possibility of the chimney becoming disconnected from the termination on the side of your home and causing a house fire. CPSC is aware of at least 20 fires involving these fireplaces. **You should discontinue use of your Marco CCT fireplace until we retrofit it.**

We will retrofit your fireplace to address this potential problem. It will take approximately 20 minutes to install the part, and in most cases, all work will be done from outside of your home. All work will be done without cost to you. With your permission, we can schedule this work without you being at home. Please call the local number of the installer listed below immediately to arrange for this work to be done.

Also, please alert us to any issues such as the following:

1. Dog is in the area where the fireplace wall termination is located.
2. The termination is more than 16 feet above ground or deck.
3. There is difficulty in accessing the wall where the termination is located.

The installer listed below will be able to answer any questions you may have. If, after contacting the installer, you still have questions, please contact Marco Mfg., Inc. at (toll free) 1-888-420-6272, or the CPSC at 1-800-638-CPSC.

Thank You.

Local Installer:

Contact:

Local Phone:



URGENT SAFETY RECALL

October 26, 1998

Dear Customer:

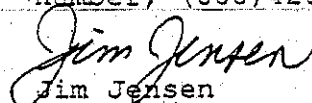
We sent you letters dated 6/17/98 and 7/24/98 in which we notified you of a safety recall to retrofit all installations of CCT model direct vent fireplaces with Marco's co-linear horizontal vent system, part number 794500. Marco took this step to prevent the possibility of the vent becoming disconnected from the wall termination. Marco is aware of at least 20 fires involving CCT fireplaces.

The U.S. Consumer Product Safety Commission (CPSC), the federal agency with jurisdiction over these products, is overseeing this recall. All companies involved in the sale and distribution of these fireplaces, including distributors and retailers, are required to cooperate and participate in this recall that Marco undertook in cooperation with the CPSC. CPSC has the authority to take administrative and/or judicial action against companies that fail to cooperate with its safety recalls.

In addition, the CPSC has told Marco to communicate to its customers that court decisions in gas product cases have assessed punitive damages, in addition to compensatory damages, in private litigation against retailers and distributors who did not cooperate with CPSC associated recalls.

Marco's recall involves retrofitting all co-linear installations with a safety device that secures the 5" flex into the termination tube. This is designed to eliminate the potential for any additional disconnect problems from whatever cause. Marco has developed a retrofit kit that is installed from outside of the house, which takes an average of 20 minutes to install. We will pay you a fee for each kit installed.

You should immediately contact Marco to participate in this recall. You may either perform the retrofit, or if you prefer, you may simply provide us with the names and locations of the customers to whom you sold or installed the recalled fireplaces. In either case, you should call Marco at its toll-free telephone number, (888) 420-6272.


Jim Jensen
National Sales Manager

MARCO MFG. INC.
2520 INDUSTRY WAY
LYNWOOD, CALIFORNIA 90262
(213) 564-3201 • FAX (213) 563-8143



Dear Marco Customer:

We at Marco appreciate your cooperation in partnering with us to comply with the CPSC "Safety Notice" involving the retrofit to the 794500 wall vent kits. We understand this will require extra effort on your part. We believe participation, although inconvenient, is the most prudent path as it can prevent public notices and future involvement by the CPSC.

The CPSC will continue to allow us to manage the process unless progress on the retrofits is not occurring in sufficient numbers and in a timely manner. In situations where progress is slow or nonexistent, the CPSC will want to direct the process, market by market, to ensure compliance. By handling this ourselves, we can sidestep the complications and chaos that might occur with homeowners and builders should public notices be required. By your early cooperation in the process, this work will complete in a timely fashion and this will be a non event.

Additionally, during the field investigation we conducted this spring, we found a number of installations where the vent was completely disconnected from the wall vent tube by several inches but still held in place by the insulation blanket. This indicates the wall vent was either improperly installed or disturbed during the construction process; this is unrelated to our CPSC investigation results. There is the additional benefit of finding any others like this and fixing them before colder weather hits your area.

I appreciate your working with Marco's Field Team in managing this process. If you are unable to comply with this process for any reason, please call me directly at your earliest convenience.

Sincerely Yours,

Jim Jensen
Director of Sales

Marco Manufacturing
2520 Industry Way
Lynwood, CA 90262
(213) 564-3201 (ph)
(213) 564-4548 (fx)

URGENT SAFETY NOTICE

Dear Homeowner,

The manufacturer of the Marco CCT gas fireplace(s) installed in your home, in cooperation with the U.S. Consumer Product Safety Commission (CPSC), will retrofit your fireplace by adding a part in the chimney system. The purpose of the retrofit is to eliminate the possibility of the chimney becoming disconnected from the termination on the side of your home and causing a house fire. CPSC is aware of at least 20 fires involving these fireplaces. **You should discontinue use of your Marco CCT fireplace until we retrofit it.**

We will retrofit your fireplace to address this potential problem. It will take approximately 20 minutes to install the part, and in most cases, all work will be done from outside of your home. All work will be done without cost to you. With your permission, we can schedule this work without you being at home. Please call the local number of the installer listed below immediately to arrange for this work to be done.

Also, please alert us to any issues such as the following:

1. Dog is in the area where the fireplace wall termination is located.
2. The termination is more than 16 feet above ground or deck.
3. There is difficulty in accessing the wall where the termination is located.

The installer listed below will be able to answer any questions you may have. If, after contacting the installer, you still have questions, please contact Marco Mfg., Inc. at (toll free) 1-888-420-6272, or the CPSC at 1-800-638-CPSC.

Thank You.

Local Installer:

Contact:

Local Phone:



SCHMID Insulation Contractors, Inc.
Insulation & Fireplaces

Lic. #221517
C2,CS1,D34

Ardell Moore
Customer Service - Fireplace

Serving Southern California Since 1963

13000 Kirkham Way • Suite 101 • Poway, CA 92064
(619) 486-9302 • FAX: (619) 486-9470

Paul Baumgardner
1-800-869-9672 Voice Mail
Ext 212
805 529-7335

Important Safety Notice

Attention Builders and Homeowners:

If you have a home built between 1993 to 1996 that has a fireplace wall vent termination similar to the one shown below, please call the following toll free number. These fireplaces, manufactured by Marco Inc., of Lynwood, CA., were installed by **FIREPLACE CONTRACTORS** of Portland between 1993 and 1994, or **RELIABLE HEATING** of Portland during 1995-1996. A safety connection device is required by the CPSC to lock the co-linear chimney vent into the wall termination in order to prevent the vent from dislodging and creating a potential fire hazard.

If you have already received a letter regarding this notice, then you do not need to call.

Toll Free number is: 888-420-6272



Wall Vent Termination



DEN
1070106

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Acting Secretary and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

August 2, 2001

CERTIFIED MAIL

Thomas C. Winiecki
Kasdore, Lewis & Swietlik
1551 South 108th Street
PO BOX 44200
Milwaukee, WI 53214-7200

**Re: FOIA Request S1070106: Marco Manufacturing CCTDecorative Gas Fireplaces
/ Commission Office of Compliance Files: CA980016 and CA000005**

Dear Mr. Winiecki:

Thank you for your Freedom of Information Act (FOIA) request to the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file referenced above, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal

information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The files also contains proprietary and confidential information submitted by the company, manufacturer monthly progress reports, that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

KASDORF, LEWIS & SWIETLIK, S.C.

Attorneys at Law

1551 South 108th Street • P.O. Box 44200 • Milwaukee, WI 53214-7200
414-257-1055 • Fax 414-257-3759

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ANN M. HETZEL
DANIEL R. PETERS
MATTHEW W. MORAN
ANTHONY P. HAHN
BRADLEY S. FOLEY
DAVID J. KANIA
BRIAN C. WILLIAMS

July 13, 2001

Office of Compliance
U.S. Consumer Product Safety Commission
Washington, D.C. 20207-0001

Re: CPSC File No.: CA980016
Marco Manufacturing Inc.
State Farm Fire and Casualty Company v. Jerry's Fireplaces, LLC, et al
Case No.: 99-CV-267
Our File No.: 208728

1/A Dear Sir/Madam:

0334
3rd
D.Y. Please be advised that our firm, by Attorney Michael A. Mesirow, represent the plaintiffs in the above-referenced matter. Marco Manufacturing, Inc. is a defendant in this lawsuit. We have been advised that the U.S. Product Safety Commission has conducted an investigation of Marco's CCT decorative gas fireplaces. Our firm would be interested in obtaining a copy of your investigative file regarding this matter. Upon receipt of this letter, please contact the undersigned to discuss our request in detail. Specifically, I would like to be apprised as to the volume of your file and the cost you would incur in duplicating this file.

I look forward to hearing from you in the near future and thank you for your cooperation in this matter.

Very truly yours,

Thomas C. Winiacki

Thomas C. Winiacki
Paralegal to Michael A. Mesirow

TCW/tcw

5-1070106

Jul 18 10 30 21

OFFICE OF COMPLIANCE
U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001



27

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Michael S. Solender
General Counsel
Enforcement and Information
Office of the General Counsel

Tel: (301) 504-0580
Fax: (301) 504-0403
Email: msolender@cpsc.gov

October 5, 2001

Ms. Annette S. Bailey
Valinoti & Dito, LLP
44 Montgomery Street, Suite 1000
San Francisco, CA 94104-4612

Re: FOIA Appeal No. S-1070047: Fisher Price Power Wheels
Ride-On Battery Powered Vehicles
Investigative Reports, Corrective Action Reports

Dear Ms. Bailey:

By letter dated September 18, 2001, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and this information. The responsive information is no longer in an open file. Accordingly, the FOI Officer has reconsidered his decision. While we must continue to withhold that information, as explained below, it may be released in the future. To pursue the disclosure of this information, you do not need to take any additional action, as explained below.

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2) and (b)(1) of the Consumer Product Safety Act, 15 U.S.C. §§ 2055 (a)(2) and (b)(1). Both of these sections require the Commission to give the manufacturer an opportunity to comment on the disclosure of product-specific information before it can be released. This has not occurred yet because the responsive information was a part of an open file that was not subject to disclosure at that time. Now that it has been closed, the FOI Officer will send it to the manufacturer for comment.



44 MONTGOMERY STREET, SUITE 1000
SAN FRANCISCO, CA 94104-4612
TELEPHONE (415) 986-1338 (Ext. 128)
FACSIMILE (415) 288-1836

ANNETTE S. BAILEY

September 18, 2001

VIA Overnight Delivery:

Office of the Secretary
U. S. CONSUMER PROTECTION SAFETY COMMISSION
Washington, D.C. 20207
Attn: General Counsel

Re: FOIA Appeal
FOIA S-1070047
CARLIN, et al. vs. Fisher-Price, et al.
Date of Loss: December 26, 1999
Consumer Product: Fisher-Price Power Wheels Toy Cars
Our File Number: 00-01-03

Dear Sir or Madam:

This office is in receipt of approximately 500 pages¹ of CPSC documents pursuant to our Freedom of Information Act (FOIA) request. We hereby timely appeal the denial of access to certain CPSC documents related to the recall of the Fisher-Price, Inc. Power Wheels toy cars.

1. Regulatory or Enforcement Documents:

With the exception of the July 2, 2001 letter from Todd A. Stevenson to Neil A. Goldberg, the majority of documents made available by the CPSC were investigation reports dated prior to 1998. We hereby appeal to the CPSC to provide those documents dated after 1998. In particular, we would like CPSC documents related to its investigation of the Power Wheels cars.

In regards to FOIA requests, Title 16 of the Code of Federal Regulations states: "[t]he Commission's policy with respect to requests for records is that disclosure is the rule and withholding is the exception. All records not exempt from disclosure will be made available. Moreover, records which may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law, or is not against public interest" [16 C.F.R. §1015.1(b)]. Additionally, "...The Commission will make available, to the extent permitted by law, records authorized to be withheld under 5 U.S.C. §552(b) unless the Commission determines that disclosure is contrary to the public interest. In this regard the Commission will not ordinarily release documents that ... interfere with the Commission's regulatory or enforcement proceedings" [16 C.F.R. 1015.15(b)].

As provided above, the Commission may make available those records previously

exempted from disclosure: notably, records concerning the investigation and adjudication of Fisher-Price, Inc.

This year, the CPSC fined Fisher-Price, Inc. \$1.1 million as a civil penalty. In June 2001, Fisher-Price, Inc. entered into a *Settlement Agreement and Order* thereby effectuating closure of the CPSC's investigation. Since the "regulatory or enforcement proceedings" have concluded, producing the CPSC investigatory records will not "interfere with enforcement proceedings" or "deprive a person of a right to a fair trial or an impartial adjudication" [5 U.S.C. 552(b)(7)(A) and (B)]. We respectfully submit to the CPSC that making available such documents is not against public interest. Rather, it is the interest of the public that such documents should be made available.

2. Draft Documents and Briefing Packages:

The CPSC did not make available any "draft documents." The Code of Federal Regulation states, "[d]raft documents that are agency records are subject to release upon request in accordance with this regulation. However, in order to avoid any misunderstanding of the preliminary nature of a draft document, each draft document released will be marked to indicate its tentative nature. Similarly, staff briefing packages, which have been completed but not yet transmitted to the Commission by the Office of the Secretary are subject to release upon request in accordance with this regulation. Each briefing package or portion thereof released will be marked to indicate that it has not been transmitted to or acted upon by the Commission" [16 C.F.R. §1015.15(c)].

No such "draft documents" nor "briefing packages" were made available by the CPSC. Presumably, one or both types of documents were generated in the CPSC's investigation of Power Wheels. Accordingly, we request access to such documents.

3. Internal Staff Memoranda and Correspondence:

Page 3 of Todd A. Stevenson's August 13, 2001 letter to our office states that "records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs... Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials..." We respectfully disagree. If necessary, privileged information can be redacted from such documents leaving only factual data, however limited it may be within some documents. In light of the closure of the CPSC's investigation, disclosure of such documents would not "prematurely reveal information ... and interfer[e] with ... the government's basis for pursuing this matter" as was argued in Mr. Stevenson's letter.

In February of each year, the CPSC submits a report to Congress detailing the FOIA requests it has received, it has processed, and those which were appealed. We note that the CPSC FOIA report dated February 1, 2001 states that "[t]he CPSC generally does not disclose to the public (3) [c]ertain inter-agency and intra-agency memoranda containing opinions and recommendations prepared to assist in decision making and (5) [i]vestigatory records compiled for law enforcement purposes when disclosure could be reasonably expected to interfere with enforcement procedures..." What is clear from these provisions is that the CPSC does not prohibit inter-agency and intra-agency memoranda that do not contain opinions and recommendations.

General Counsel, CPSC
September 18, 2001
Page 3

Furthermore, disclosure at this time can not be reasonably expected to interfere with enforcement procedures since the CPSC investigation is completed.

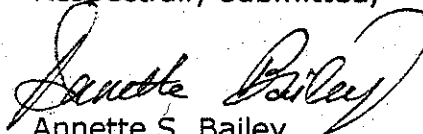
4. Updated Collection of Documents:

The arguments set forth above are hereby incorporated by reference. We are advised by CPSC staff that it has received numerous FOIA requests related to the recall of the Power Wheels toy cars. The CPSC staff further advised that, given the number of similar FOIA requests, they had produced a compilation of documents which were prepared prior to our FOIA request. Accordingly, we are concerned that we did not receive a compilation of FOIA documents that were complete, updated, and assembled with care.

Finally, please note that in deference to §1905 of Title 18 of the United States Code, this request is not to be construed as a request for any trade secret, commercial, or financial information concerning Fisher-Price, Inc.

The above stated appeal is not meant to be an all inclusive list of issues. We reserve the right to amend and supplement this appeal. If you have any questions or concerns, please do not hesitate to call. Thank you for your time and assistance.

Respectfully submitted,


Annette S. Bailey
Paralegal

cc: Clients (Via United States Postal Service)



Off (6b rel), chron, 2618

✓ 1330 Fisher Price

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and Freedom of Information Officer
Freedom of Information Division
Office of the Secretary

Tel: 301 504 0785
Fax: 301 504 0127
Email: tstevenson@cpsc.gov

August 13, 2001
CERTIFIED MAIL

Ms. Annette S. Bailey
Paralegal
Valinoti & Dito, LLP
44 Montgomery Street, Suite 1000
San Francisco, CA 94104-4612

**RE: FOIA S-1070047: Fisher Price Power Wheels Ride-On Battery
Powered Vehicles, Investigative Reports, Corrective Action Reports**

Your File Number: 00-10-03

Dear Ms. Bailey:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

Enclosed are copies of a letter dated December 10, 1998 from the Commission's Director of Compliance, Alan Schoem, to Gary S. Baughman, President & Chief Executive Officer of Fisher Price, Inc., regarding the Power Wheel recall and a letter December 18, 1998, addressed to Mr. Schoem from Neil A. Goldberg responding. Portions of the December 18, 1998 letter are being withheld pursuant to exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552 (b)(3) and (b)(4), and section 6(a)(2) (as it relates to trade secrets and proprietary information) of the Consumer Product Safety Act (CPSA, 15 U.S.C. § 2055(a)(2) and exemptions 3, 4, 6(b)(1) for fairness (See notes in margin of December 18th letter.) We must withhold from disclosure other records responsive to your request that are contained in the Commission's law enforcement investigatory files, RP970166 and RP970028, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2), and 6 (b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055 (a)(2), and 6(b)(1).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain

proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. We are also relying in part on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlement agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

The enclosed records include thirteen (13) Epidemiologic (In-Depth) Investigation Reports Limited Accidental Injury Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to seven (7) product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In some of the complaints and reported incidents we have removed the identities of the complainants at their request.

Also enclosed is a copy of docket number CPSC 01-C0008, Fisher Price, Inc., a corporation that involved the Commission's acceptance of the final Settlement Agreement and order.

You will note that in the document disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures

without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We must withhold other records that may be responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory files concerning Fisher Price Power Wheels pursuant to the Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$175.00. In this instance, we have decided to waive the charges. Should you have any questions, contact us by letter, facsimile or telephone.

Sincerely,

Todd A. Stevenson

Enclosures



Off (rev/rel) chron.
2618

✓ 1330 fisher price

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and Freedom of Information Officer
Freedom of Information Division
Office of the Secretary

Tel: 301 504 0785
Fax: 301 504 0127
Email: tstevenson@cpsc.gov

August 13, 2001

Cheryl A. Possenti
Goldberg Segalla, LLP
120 Delaware Avenue, Suite 500
Buffalo, New York 14202

**RE: FOIA Request S-1070047: "Renotification" Comment Letter Response
for Fisher Price Power Wheels**

Dear Ms. Possenti:

This concerns your letter of July 31, 2001, that responded to our notice of July 11, 2001. Our notice was a renotification for some documents that were previously released and that we intend to release now. We have already responded to your comments that you have repeated again in your letter dated July 31, 2001. Our response remains the same for those comments as it did for Freedom of Information Act request number S-810094 that was released in September of 1999.

We note that you would like to be re-notified if there are other requests for Fisher Price Power Wheels information.

Sincerely,

Todd A. Stevenson



44 MONTGOMERY STREET, SUITE 1000
SAN FRANCISCO, CA 94104-4612
TELEPHONE (415) 986-1338 (Ext. 128)
FACSIMILE (415) 288-1836

ZUANNETTE S. BAILEY

July 6, 2001

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED:

Mr. Todd Stevenson
Freedom of Information Officer
CONSUMER PROTECTION SAFETY COMMISSION
Washington, D.C. 20207

Re: *CARLIN, et al. vs. Fisher-Price, et al.*
Date of Loss: December 26, 1999
Consumer Product: Fisher-Price Power Wheels Toy Cars
Our File Number: 00-01-03

Dear Mr. Stevenson:

Our office represents the plaintiffs in the above-referenced action. Pursuant to the Freedom of Information Act and my July 3, 2001 conversation with Allan Shakin, this serves as notice of our request for the CPSC's complete file regarding the recall of the Fisher-Price Power Wheels battery-powered, ride-on toy cars. Specifically, we request the following:

- ▶ All copies of letters, emails, facsimiles, and any other writings from consumers that discuss the Fisher-Price Powers Wheels toy cars.
- ▶ All copies of correspondence between the CPSC, Mattel, Inc., Fisher-Price, Inc., and/or any other individual or entity that discusses the Fisher-Price Power Wheels toy cars.
- ▶ All copies of Corrective Action Plans or other similar documentation submitted by Mattel, Inc., Fisher-Price, Inc., or their agents for modification of the Power Wheels toy cars and implementation of the recall.
- ▶ All copies of investigative reports, memoranda, and other writings by the CPSC that are in regard to Mattel, Inc., Fisher-Price, Inc., and the recall of the Power Wheels toy cars.

S-1070047

+ docket



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

July 11, 2001

Annette Bailey
Valinoti & Dito
44 Montgomery Street
Suite 1000
San Francisco, CA 94104-4612

RE: FOIA Request No. S-2001070047 (Power Wheels)

Dear Ms. Bailey:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request seeking records from the Consumer Product Safety Commission.

Due to the heavy volume of FOIA requests we have received, and because of certain procedural steps we are required to take under our statute, there may be substantial delays in responding to many requests. Please be assured that every effort is being made to process each request as equitably as possible and that the records you requested which can be released will be made available to you at the earliest possible date.

If you have any questions concerning your request, feel free to contact this office at (301) 504-0785.

Sincerely,

A handwritten signature in cursive script that reads "Todd A. Stevenson".

Todd A. Stevenson
Freedom of Information Officer
Office of the Secretary